

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

D. RODNEY ROGERS,

Plaintiff,

Civil Case No. 16-12735
Honorable Linda V. Parker

v.

MATTHEW RYAN, SERINA KELLEY,
JEFFREY MORIN, RAY SAATI, and
MICHAEL O. BROWN

Defendants.

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S JULY 31,
2019 REPORT AND RECOMMENDATION AND GRANTING IN PART
AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

On July 19, 2016, Plaintiff commenced this lawsuit against Defendants alleging violations of his constitutional rights under 42 U.S.C. § 1983, negligence, assault and battery, and intentional infliction of emotional distress. On August 13, 2018, Defendants filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The matter has been assigned to Magistrate Judge David R. Grand for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B).

On July 31, 2019, Magistrate Judge Grand issued a report and recommendation (“R&R”) recommending that the Court grant in part and deny in part Defendants’ motion. (ECF No. 176.) Specifically, Magistrate Judge Grand concludes that several of Plaintiff’s claims are barred by the Supreme Court’s decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), and must be dismissed. (*Id.* at Pg Id 2177-80.) Magistrate Judge Grand also recommends dismissal of Plaintiff’s negligence claim pursuant to Sixth Circuit precedent. (*Id.* at Pg ID 2188 n.10.) Magistrate Judge Grand further concludes that Defendant Serina Kelley is entitled to summary judgment with respect to Plaintiff’s excessive force, assault and battery, and deliberate indifference claims. However, Magistrate Judge Grand finds that Defendants failed to demonstrate their entitlement to summary judgment with respect to Plaintiff’s remaining claims. (*Id.* at Pg ID 2180-92.)

At the conclusion of his R&R, Magistrate Judge Grand advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Grand. The Court therefore adopts the R&R.

Accordingly,

IT IS ORDERED that Defendants' motion for summary judgment (ECF No. 115) is **GRANTED IN PART AND DENIED IN PART** in that Defendants, **except Defendant Serina Kelley**, are **denied** summary judgment with respect to Plaintiff's excessive force, assault and battery, and deliberate indifference claims. Defendant Kelley is **granted** summary judgment with respect to those claims. All Defendants are **denied** summary judgment with respect to Plaintiff's due process and intentional infliction of emotional distress claims. Defendants are **granted** summary judgment with respect to Plaintiff's remaining claims.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: August 30, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, August 30, 2019, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager